OPINION OF ADVOCATE GENERAL MAZÁK
delivered on 26 January 2010[1]

1. The Juzgado de lo Mercantil No 4 de Barcelona (Commercial Court No 4, Barcelona) (Spain) has referred the following question to the Court for a preliminary ruling:

'Does the limit of liability referred to in Article 22.2 of the Convention for the Unification of Certain Rules for International Carriage, signed in Montreal on 28 May 1999 include both non-material damage and material damage resulting from the loss of baggage?'

2. The referring court considers that the answer of the Court is necessary in order to give a ruling in an action for damages brought by Mr Axel Walz against the air carrier Clickair S.A. ('Clickair') for the loss of his suitcase.

3. The suitcase was lost on 4 June 2007 during a flight from Barcelona to Porto operated by Clickair. Mr Walz checked the suitcase in on that flight, but, on his arrival in Porto, it was not returned to him.

4. Mr Walz claimed damages of EUR 3 200: EUR 2 700 for the value of the lost baggage and EUR 500 for non-material damage resulting from that loss. Clickair challenges the amount of the damages claimed because that amount exceeded the limit for liability for lost baggage laid down by Article 22.2 of the Convention for the Unification of Certain Rules for International Carriage, signed in Montreal on 28 May 1999 ('the Montreal Convention').

5. The referring court observes that the Montreal Convention does not draw any distinction according to the type of damage to

1 — Original language: French.

which the carrier's liability relates, and takes the view that the limitation on the carrier's liability should cover both non-material and material damage. However, it indicates that a number of interpretations of Article 22.2 of the Montreal Convention are possible. It draws attention, in particular, to the decision of 2 July 2008 of the Audiencia Provincial (Provincial Court) de Barcelona according to which the limit of liability in the event of loss of baggage fixed by Article 22.2 of the Montreal Convention did not include both material and non-material damage. According to that decision material damage is subject to one limit, while non-material damage is subject to another limit of the same amount. [2]

6. Before the Court, written observations were lodged by the applicant in the main proceedings, by the defendant in the main proceedings and by the Commission. The defendant in the main proceedings requested a hearing, which was held on 10 December 2009, attended by the authorised representatives of the defendant in the main proceedings and of the Commission.

Legal background

Montreal Convention

7. The Montreal Convention [3] is the result of the International Diplomatic Conference on Air Law which took place in Montreal between 10 and 28 May 1999. It was signed by the Community on 9 December 1999 on the basis of Article 300(2) EC, before being approved by Council decision of 5 April 2001. [4] The Convention entered into force in the Community on 28 June 2004.

8. It is clear from the preamble to the Montreal Convention that the States Parties recognised 'the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.'

9. Articles 17 to 37 of the Montreal Convention make up Chapter III, which is entitled 'Liability of the carrier and extent of compensation for damage.'

2 — At the hearing before the Court, the authorised representative of the defendant in the main proceedings indicated that the Audiencia Provincial de Barcelona had since changed its approach in that regard, so that the limit of liability covers both non-material and material damage.

3 — The Convention was drafted in French, English, Arabic, Chinese, Spanish and Russian; each of those versions being equally authentic.

4 — OJ 2001 L 194, p. 38. The text of the convention is annexed to that decision.

10. The liability of carriers for the loss of checked baggage is laid down in Article 17.2 of that convention in the following terms:

'The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. …'

11. However, the carrier's liability is limited. Article 22.2 of the Montreal Convention provides as follows:

'In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.'

Regulation (EC) No2027/97

12. The provisions of the Montreal Convention relating to the liability of air carriers were incorporated into Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents [5] ('Regulation No 2027/97'), [6] which was amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002. [7]

13. Article 3(1) of Regulation No 2027/97 provides:

'The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.'

5 — OJ 1997 L 285, p. 1.

6 — A regulation of this kind also exists for the liability of carriers of passengers by sea: Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ 2009 L 131, p. 24) which incorporates into Community law the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974.

7 — OJ 2002 L 140, p. 2.

Assessment

14. Since the question referred for a preliminary ruling concerns the interpretation of provisions of an international treaty, it is appropriate, as a preliminary point, to mention two elements drawn from the case-law of the Court which, in my opinion, are important for the answer to the question referred.

15. First, the Montreal Convention, as an agreement concluded on the basis of Article 300 EC, forms an integral part of the Community legal system, so that the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement. [8]

16. Second, the Montreal Convention, as an international treaty, must be interpreted not solely by reference to the terms in which it is worded but also in the light of its objectives. Articles 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties and of 21 March 1986 on the Law on Treaties between States and International Organisations or between International Organisations, which formalise the relevant customary international law, state, in that connection, that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. [9] In that connection, it must be added that the interpretation of the Montreal Convention given by the Court will contribute to its uniform application not only in the framework of the European Union, but also among the Contracting States.

17. Furthermore, it should be recalled that the rules on the liability of air carriers in Chapter III of the Montreal Convention, which include, in general, mandatory provisions, are not exhaustive. [10] The provisions of Chapter III lay down the basic principles governing the liability of air carriers, such as, inter alia, the events giving rise to liability, the grounds of exoneration and the limits on liability. The regulation of other issues related to liability is left to national laws.

18. In this case, the question referred for a preliminary ruling draws the attention of the Court to the liability incurred by air carriers for damage resulting from the loss of baggage, specifically as regards the limits on that liability.

8 — See, to that effect, Case 181/73 *Haegeman* [1974] ECR 449, paragraph 5; Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7; Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 36; Case C-173/07 *Emirates Airlines* [2008] ECR I-5237, paragraph 43; and Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 28.

9 — See, to that effect, Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraph 35, and *IATA and ELFAA*, footnote 8 above, paragraph 40.

10 — It must be stated that the piecemeal nature of the regulation is a feature of international treaties of that kind.

19. The civil liability at issue here always involves the existence of damage connected to an event by a causal link. The loss of baggage is among the events liable to cause the air carrier to incur liability, in accordance with Articles 17, 18 and 19 of the Montreal Convention. Other events relate to passengers (death, injury or delay), cargo (destruction, loss, damage or delay) and baggage (destruction, damage or delay).

20. As regards the events having legal consequences mentioned above, the Montreal Convention distinguishes two different regimes of liability for air carriers in the event of damage. Liability for damage sustained in the event of death or injury suffered by a passenger is generally unlimited, whereas liability incurred in all other cases, including loss of baggage, is limited in accordance with Article 22 of the Montreal Convention.

21. As regards lost baggage, with which this case is concerned, the limit of liability has been fixed at 1 000 Special Drawing Rights per passenger. [11] That limit of liability is a financial limit, a ceiling for compensation, and not a limit on what the carrier's liability covers, as defined in Article 17.2 of the Montreal Convention. An examination of the distinction between material and non-material damage shows that that distinction relates to what the liability covers in terms of the types of damage. In any event, a limit of compensation does not vary, whatever that liability covers.

22. Moreover, the Montreal Convention uses only one general concept, 'damage', without providing any further details in that respect. It cannot be inferred from the wording of Article 17.2 of the Montreal Convention or Article 22.2 thereof that the Contracting States wished to limit the liability of carriers to material damage or, conversely, to non-material damage. Neither does the Montreal Convention indicate the way in which compensation is to be provided, that is to say whether actual damage, loss of profit or equally any other damage capable of being evaluated in monetary terms may be compensated. It is for national law to give substance to the concept of 'damage' and to determine the method of providing compensation.

23. In accordance with the foregoing, in my view the answer the question referred for a preliminary ruling should be that the liability of a carrier in the event of loss of baggage is 1 000 Special Drawing Rights per passenger in total, whatever the type of damage and the method of providing compensation. Since Article 22.2 of the Montreal Convention provides for the application of the same limit also in the event of the destruction, damage or delay, the suggested answer also covers such cases.

11 — The same limit is provided for in the event of destruction, loss/damage or delay of baggage.

Conclusion

24. In the light of all the foregoing considerations, I propose that the Court should answer the question referred by the Juzgado de lo Mercantil No 4 de Barcelona as follows:

Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage, signed in Montreal on 28 May 1999, must be interpreted as meaning that, in the transport of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights per passenger in total, whatever the type of damage and the method of providing compensation.